

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 SADIE YVONNE COLEMAN,

8 Petitioner,

9 v.

10 UNITED STATES OF AMERICA,

11 Respondent.

Case No. C05-0788L

ORDER GRANTING IN PART  
CERTIFICATE OF APPEALABILITY

12  
13 This matter comes before the Court on petitioner's "Notice of Appeal and Request  
14 for Certificate of Appealability [sic]" under 28 U.S.C. § 2253. Because petitioner filed her  
15 notice of appeal after April 24, 1996, her appeal is governed by the Antiterrorism and Effective  
16 Death Penalty Act of 1996 ("AEDPA"), which worked substantial changes to the law of habeas  
17 corpus. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not appeal the  
18 denial of a habeas corpus petition unless the district court or the Ninth Circuit issues a certificate  
19 of appealability identifying the particular issues that may be pursued on appeal. United States v.  
20 Asrar, 116 F.3d 1268 (9th Cir. 1997).

21 To obtain a certificate of appealability, the petitioner must make a substantial  
22 showing of the denial of a constitutional right. "Obviously the petitioner need not show that he  
23 should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463  
24 U.S. 880, 893 n.4 (1983). Rather, she must demonstrate that the resolution of the habeas  
25 petition is debatable among reasonable jurists or that the issues presented were "adequate to  
26

ORDER GRANTING IN PART  
CERTIFICATE OF APPEALABILITY

1 deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).  
2 Where a petition is dismissed on procedural grounds, the Court must determine whether “jurists  
3 of reason” would debate (1) whether the petition states a valid claim of the denial of a  
4 constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529  
5 U.S. at 484.

6           Having reviewed the record in this case, including the Report and  
7 Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, the  
8 Court finds that the dismissal of petitioner’s claims regarding the effectiveness of counsel is  
9 debatable among reasonable jurists and that those claims deserve to proceed further. The  
10 Court’s findings regarding petitioner’s other grounds for review, namely the right to jury trial  
11 and the trial court’s suppression decisions, jury instructions, and evidentiary rulings, are not  
12 debatable and should not be the subject of an appeal under the AEDPA.

13  
14           For all of the foregoing reasons, petitioner’s request for a certificate of  
15 appealability is GRANTED in part and DENIED in part.

16  
17           DATED this 7th day of December, 2005.

18           

19           Robert S. Lasnik  
20           United States District Judge